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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM EDSON KINGSLAND,

Defendant and Appellant.

B234053

(Los Angeles County
Super. Ct. Nos. MA047628 &
MA051159)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Christopher G. Estes, Judge. Modified and, as so modified, affirmed.

Joy A. Maulitz, under appointment by the Court of Appeal, for Defendant
and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney
General, Lance E. Winters, Assistant Attorney General, Victoria B. Wilson and Kim
Aarons, Deputy Attorneys General, for Plaintiff and Respondent.

William Edson Kingsland appeals the judgment entered following his conviction by jury of desertion of a child under the age of 14 years with the intent to abandon (child abandonment) and misdemeanor child endangerment. (Pen. Code, §§ 271, 273a, subd. (b).)¹ We order the judgment modified to stay, pursuant to section 654, the concurrent six-month term imposed with respect to misdemeanor child endangerment in count 1. At the request of the People, we further order the judgment modified to reflect a \$40 court security assessment (§ 1465.8, subd. (a)(1)) and a \$30 court facility assessment (Gov. Code, § 70373) as to count 1. As so modified, the judgment is affirmed.

FACTS AND PROCEDURAL BACKGROUND

1. The prosecution's evidence.

On the morning of Monday, November 15, 2010, Jessica Sanchez, a resident of an apartment complex on Beech Avenue in Lancaster, prepared to walk her children and her nieces to school. Sanchez's sister telephoned at 7:23 a.m. to advise Sanchez she and her daughters were leaving their home. Sanchez walked outside with her children at 7:25 a.m. As she exited the gate to the complex, she saw Kingsland leaning over the fence next to a baby in a stroller. Sanchez had never seen Kingsland or his child and asked Kingsland if he wanted to enter the complex. Kingsland responded, "no," and indicated he "was just waiting right there."

As Sanchez waited for her sister, Kingsland asked how long Sanchez had lived in the complex. When Sanchez told him she had been there for more than a year, Kingsland responded he had been there for six months and he was ready "to get the 'F' out."

Kingsland then began speaking into a cell phone to someone named Tiffany. Sanchez overheard Kingsland tell Tiffany "she wasn't going to leave him," and "he wasn't scared" even though "she could get her brothers to come and beat his ass." Sanchez knew a Tiffany who lived in the complex and assumed she was the baby's mother. Kingsland then asked Sanchez the time. When Sanchez wondered why

¹ Subsequent unspecified statutory references are to the Penal Code.

Kingsland did not look at the time on his cell phone, Kingsland told her his phone was broken and showed Sanchez the phone had a cracked screen.

When Sanchez's sister arrived, Sanchez, her nieces and her children began walking toward the school. Sanchez looked back and saw Kingsland was gone but the stroller and baby were still there. As Sanchez walked toward the stroller, she saw Kingsland across the street and down the block and yelled. "Hey, your baby." Kingsland continued to walk from the baby and responded, "Fuckin' leave him there, or if you want [sic]." Sanchez then said, "It's your baby," and Kingsland responded, "Fuckin' take him if you want him or let the cops or his foster parents come and get him." As Sanchez reached the stroller, Kingsland again stated Sanchez could take the baby. He then turned and walked away. At that point, Kingsland was approximately 50 yards from the stroller.

Sanchez found the baby was not strapped into the stroller and the stroller wheels were not locked. Although it was cold, the baby was wearing only a "onesie," i.e., a T-shirt that fastened between the baby's legs. There was a receiving blanket in the stroller but it was not covering the baby.

Sanchez pushed the stroller to the school where she located the Tiffany she knew but learned she was not the baby's mother. Tiffany called 911. As Sanchez waited for a sheriff's deputy to arrive and take custody of the child, she found a burn mark on his right hand and noticed his diaper was "soaked" with urine. When she changed the baby's diaper, she noticed he had a "really bad" rash, and his "private was swollen." The baby also drank a cup of milk "very fast."

Angelica L., the foster mother to the baby and his older sister, testified that, at the time of the incident, Kingsland and his wife, Tiffany, had custody of the children from Friday evening until Monday. Angelica L. normally picked the children up on Monday at either 9:00 a.m. or later in the day, at around 6:00 p.m.

Early on the morning of November 15, 2010, or perhaps the previous evening, Angelica L. received a telephone call from Tiffany stating Tiffany and her daughter had missed the bus home from Disneyland. Angelica L. agreed to pick the children up later in the day. She subsequently received a telephone call from the sheriff's department and

went to the sheriff's station. When Angelica L. received the baby, she noticed his diaper rash was worse than usual.

Deputy Sheriff Richard Ellis testified the temperature in Lancaster on the morning of the incident was 41 degrees. Deputy Ellis also testified Sanchez's apartment complex is in one of the "rougher neighborhoods" in Lancaster, making it a particularly unsafe area to leave a child unattended.

2. Defense evidence.

Kingsland testified in his own defense. On the Saturday prior to the incident, his wife went to Disneyland with their daughter. She did not return on Sunday afternoon as he anticipated and, by Monday morning, he still had not heard from her. Kingsland's cell phone "locked . . . because [he] didn't have the right security code" and he was having "major anxiety" because he did not know where his wife was or whether she would be home by 9:00 a.m. to return the children to the foster mother.

At 7:30 a.m., Kingsland dressed the baby in a long sleeve onesie and socks, covered the child with the blanket and went outside to meet the foster mother and to try to find a telephone to contact his wife. Kingsland asked several people in the apartment complex if they had seen his wife. Kingsland was "very worried" and a "perhaps a little angry" with his wife. He had been outside approximately 20 minutes when he saw Sanchez. He recognized Sanchez from the apartment complex and struck up a conversation with her in order to judge her character because he wanted someone to watch the baby while he went down the street to a friend's house to use the telephone. Although he appeared to be talking on his cell phone in Sanchez's presence, he was "just going over things in [his] head."

Kingsland spoke to Sanchez for about five minutes and, at the end of the conversation, Sanchez agreed to watch the baby. Kingsland told Sanchez the child's foster mother would arrive at 9:00 a.m. in a red van, or his wife might return and take the baby. Kingsland claimed Sanchez was alone and had no children with her. However, he previously had seen her caring for children in the apartment complex.

Kingsland went to his friend's house but no one answered the door. He then walked to a Boost Mobile store to get his phone fixed, but the store was not open, so he took a bus to a Wal-Mart to buy a new phone. When Kingsland returned at approximately 11:30 a.m., Sanchez and his son were gone. Kingsland called his wife, who told him the police had taken custody of their son.

3. *Verdicts and sentencing.*

In count 1, the jury acquitted Kingsland of felony child endangerment in violation of section 273a, subd. (a), but convicted him of misdemeanor child endangerment in violation of section 273a, subdivision (b).² In count 2, the jury convicted Kingsland of child abandonment in violation of section 271. The trial court sentenced Kingsland to the upper term of three years for child abandonment and imposed a concurrent term of six months for misdemeanor child endangerment.³ With respect to count 2, the trial court ordered Kingsland to pay, inter alia, a \$40 court security assessment (§ 1465.8, subd. (a)(1)) and a \$30 court facility assessment (Gov. Code, § 70373).

CONTENTIONS

Kingsland contends the punishment for misdemeanor child endangerment should have been stayed pursuant to section 654 as the offense arose out of the same, indivisible course of conduct as the conviction of child abandonment.

The People contend the trial court erred in failing to impose a court security and a court facility assessment with respect to count 1.

² Felony child endangerment, as relevant here, is committed when a person having the care or custody of a child “willfully causes or permits that child to be placed in a situation where his or her person or health *is* endangered” (§ 273a, subd. (a), italics added.) Misdemeanor child endangerment is committed where the child is placed in a situation “where his or her person or health *may be* endangered” (§ 273a, subd. (b) italics added.)

³ The trial court also found Kingsland in violation of probation in another case based on his conviction in this case, imposed a previously suspended two-year term and ordered it to run concurrently to the three-year term imposed on count 2.

DISCUSSION

1. *The concurrent term imposed with respect to count 1 must be stayed.*

Section 654 prohibits punishment for two crimes arising from a single, indivisible course of conduct.⁴ (*People v. Latimer* (1993) 5 Cal.4th 1203, 1208.) Thus, if all of the crimes were merely incidental to, or were the means of accomplishing or facilitating a single objective, the defendant may receive only one punishment. (*Ibid.*) “The defendant’s intent and objective are factual questions for the trial court; [to permit multiple punishments,] there must be evidence to support a finding the defendant formed a separate intent and objective for each offense for which he was sentenced. [Citation.]” (*People v. Adams* (1982) 137 Cal.App.3d 346, 355.) When a trial court sentences a defendant to separate terms without making an express finding the defendant entertained separate objectives, the trial court is deemed to have made an implied finding each offense had a separate objective. (*People v. McKinzie* (2012) 54 Cal.4th 1302, 1368; *People v. Osband* (1996) 13 Cal.4th 622, 730-731.) “A trial court’s implied finding that a defendant harbored a separate intent and objective for each offense will be upheld on appeal if it is supported by substantial evidence.” (*People v. Blake* (1998) 68 Cal.App.4th 509, 512.)

Kingsland contends his single objective with respect to both offenses was to free himself of the care of his child while he tried to contact his wife. He argues the abandonment of the child was the only criminal act in question and it was the means by which both offenses were committed. Because both charges involved the same conduct, the punishment for the lesser offense must be stayed.

The People claim the crime of child endangerment occurred when Kingsland failed to provide adequate food, clothing, shelter, or hygiene for the baby. Specifically, Kingsland failed to dress the baby adequately in light of the temperature, failed to

⁴ Section 654 provides, in part: “An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision.”

provide adequate hygiene by changing the baby's diaper with enough frequency to prevent diaper rash, and failed to provide adequate hydration as demonstrated by the baby's thirst. They assert the failure to provide such care is sufficient to support the conviction of misdemeanor child endangerment. Thus, according to the People, the crime of child endangerment was complete before Kingsland abandoned the baby. Therefore, the trial court properly imposed a concurrent term for misdemeanor child endangerment.

Had the People proceeded at trial on the theory the crime of child endangerment was complete before Kingsland left the child in the stroller, their current assertion might be tenable. However, the prosecutor relied on the act of leaving the child to support both the count of child endangerment and the count of child abandonment.

In opening argument, the prosecutor noted child endangerment required proof the child was placed in a situation in which his person or health may be endangered. The prosecutor asked: "Now, what situation are we talking about? . . . [¶] . . . He dressed [the child] up in only a onesie; he brought [the child] outside in 41° temperature; he didn't fasten [the child] into the stroller; he didn't secure the stroller in any way; . . . and he left the stroller 7 feet from a public street; he then left the location northbound on Beech Avenue and [walked] out of sight. [¶] So this is what is constituting Count 1, this is what we are looking at. This is what the defendant did to put [the child] in this situation. [¶] So when I refer to 'situation,' I'm referring to all of these things that he did."

After noting a reasonable person would not even leave a cell phone on the sidewalk, the prosecutor asked: "is putting [the child] in this situation, leaving him out in the street, in 40° weather, wearing barely anything, not strapped into a stroller, is that the kind of situation that an ordinary and careful parent would do under the circumstances? [¶] Absolutely not." The prosecutor concluded the People had proved "guilt beyond a reasonable doubt as to Count 1." The prosecutor thereafter addressed count 2, child abandonment.

In rebuttal argument, the prosecutor asserted that, even if the jury believed Kingsland's testimony, "you can still find him guilty on count 1, because leaving your child with a complete stranger whose name you don't know, whose address you don't know, who you don't know anything about, certainly is something that is likely to cause great bodily injury."

Given the prosecutor's argument, the People cannot be heard to argue the conduct underlying count 1, child endangerment, was separate from the conduct underlying count 2, child abandonment. (See *People v. McKinzie*, *supra*, 54 Cal.4th at p. 1369 [defendant could not be punished for both carjacking and kidnapping for robbery because the prosecutor argued to the jury the victim's car was the object of the robbery].)

We shall order the judgment modified to stay the term imposed for child endangerment.

2. *The abstract of judgment must be corrected to reflect additional assessments.*

With respect to the principal term, child abandonment in count 2, the trial court ordered Kingsland to pay a \$40 court security assessment (§ 1465.8, subd. (a)(1)), and a \$30 court facility assessment (Gov. Code, § 70373). The People contend the trial court should have imposed the same fees with respect to count 1. It appears this contention is well taken.

Section 1465.8, subdivision (a)(1), states "an assessment of forty dollars (\$40) shall be imposed on every conviction for a criminal offense, including a traffic offense, except parking offenses" Government Code section 70373, subdivision (a)(1) states an assessment in the amount of \$30 "shall be imposed on every conviction for a criminal offense, including a traffic offense, except parking offenses"

Because these assessments are mandatory, their omission constitutes an unauthorized sentence which may be corrected at any time. (See *People v. Castellanos* (2009) 175 Cal.App.4th 1524, 1530; *People v. Valenzuela* (2009) 172 Cal.App.4th 1246, 1249.) We shall order the judgment amended to include a \$40 court security assessment and a \$30 court facility fee as to count 1.

DISPOSITION

The judgment is modified with respect to count 1, misdemeanor child endangerment in violation of section 273a, subdivision (b), to reflect a stay pursuant to section 654 of the concurrent term imposed, and to reflect a \$40 court security assessment (§ 1465.8, subd. (a)(1)) and a \$30 criminal conviction assessment (Gov. Code, § 70373). As so modified, the judgment is affirmed. The clerk of the superior court shall prepare and forward to the Department of Corrections and Rehabilitation an amended abstract of judgment reflecting these modifications.

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KLEIN, P. J.

We concur:

KITCHING, J.

ALDRICH, J.